REMARKS

Summary Of The Office Action & Formalities

Status of Claims

Claims 1-9 and 11-18 are all the claims pending in the application. By this Amendment, Applicant is canceling claim 11, amending claims 1 and 16-18, and adding new claims 19 and 20. No new matter is added.

Drawings

The drawings are objected to under 37 C.F.R. § 1.83(a) for the reasons set forth at page 2 of the Office Action. Applicant respectfully disagrees and requests withdrawal of the objection, since element 40 is that lateral actuator element and part of the actuator means. Moreover, the actuator means returns to its original position after actuation.

Claim Rejections - § 112

Claims 1-9 and 11-18 are rejected under 35 U.S.C. § 112, first paragraph, for the reason set forth at pages 3-4 of the Office Action. Applicant respectfully disagrees for reasons similar to those noted above in connection with the drawing objection.

Furthermore, the Applicant is not required to explain every detail of the preferred embodiment to satisfy the 35 U.S.C. § 112(1) enablement requirement. Indeed, a "patent disclosure need not enable information within the knowledge of an ordinarily skilled artisan. Thus, a patentee preferably omits from the disclosure any routine technology that is well known at the time of application." *Chiron Corp. v. Genentech, Inc.*, 363 F.3d 1247, 1254, 70 USPQ2d 1321 (Fed. Cir. 2004), cert. denied, 125 S. Ct. 870 (2005). "[A]s part of the *quid pro quo* of the

patent bargain, the applicant's specification must enable one of ordinary skill in the art to practice the full scope of the claimed invention . . . . That is not to say that the specification itself must necessarily describe how to make and use every possible variant of the claimed invention, for the artisan's knowledge of the prior art and routine experimentation can often fill gaps, interpolate between embodiments, and perhaps even extrapolate beyond the disclosed embodiments, depending upon the predictability of the art." *AK Steel Corp. v. Sollac*, 344 F.3d 1234, 1244, 68 USPQ2d 1280 (Fed. Cir. 2003). In fact, in examining a patent application, **the PTO is required to assume that the specification complies with the enablement provision** of Section 112 unless it has "acceptable evidence or reasoning" to suggest otherwise. . . . *Gould v. Mossinghoff*, 229 USPQ 1, 13-14 (D.D.C. 1985). Moreover, the fact that experimentation may be complex does not necessarily make it undue, if the art typically engages in such experimentation. *In re Certain Limited-Charge Cell Culture Microcarriers*, 221 USPQ 1165, 1174 (Int'l Trade Comm"n 1983), *aff'd. sub nom., Massachusetts Institute of Technology v. A.B. Fortia*, 774 F.2d 1104, 227 USPQ 428 (Fed. Cir. 1985). *See also In re Wands*, 858 F.2d at 737, 8 USPQ2d at 1404. The test of enablement is not whether any experimentation is necessary, but whether, if experimentation is necessary, it is undue. *In re Angstadt*, 537 F.2d 498, 504, 190 USPQ 214, 219 (CCPA 1976).

It is clear that one skilled in the art could have practiced the claimed invention without undue experimentation. For example, given the state of the art of the fluid dispensers and the like, a person skilled in this art has good technical knowledge regarding mechanisms for actuating such devices and in particular would know how to develop several possibilities to drive an axial

displacement of the spray means via a lateral actuator without undue experimentation. One example is given in the description of the present invention. Other examples could also be used.

Art Rejections

1. Claims 1, 2, and 4-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Colombo (US 3,905,365) in view of Crose (US 5,137,528).

2. Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Colombo (US 3,905,365) in view of Crose (US 5,137,528) as applied to claims 1 and 2 above, and further in view of Leonard et al. (US 4,581,022).

3. Claims 1-9 and 11-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Opperman (US 6,145,703) in view of Crose (US 5,137,528).

Applicant respectfully traverses.

Claim Rejections - 35 U.S.C. § 103

1. Claims 1, 2, And 4-8 Over Colombo (US 3,905,365) In View Of Crose (US 5,137,528).

Applicant has amended claim 1 to recite the feature of claim 11, thereby rendering this rejection moot.

2. Claim 3 Over Colombo (US 3,905,365) In View Of Crose (US 5,137,528) As Applied To Claims 1 And 2 Above, And Further In View Of Leonard et al. (US 4,581,022).

Again, Applicant's amendment to claim 1 renders this rejection moot.

3. Claims 1-9 And 11-18 Over Opperman (US 6,145,703) In View Of Crose (US 5,137,528).

In rejecting claims 1-9 and 11-18 over Opperman (US 6,145,703) in view of Crose (US 5,137,528), the grounds of rejection state:

> Regarding claim 1, Opperman discloses a fluid spraying device comprising:

a body (8) provided with a spray orifice, a reservoir (111) containing the spray fluid to be sprayed, a spray means (16) for spraying one or more doses of the fluid contained in the reservoir, and actuator means (31), the reservoir being closed in a sealed manner before the spray device is actuated for the first time, the body including reservoir opening means (15) adapted to open the reservoir while the device is being actuated, said reservoir forming a sealed unit that is separate from the body (see figures 3 and 7), said reservoir being filled with fluid and being sealed hermetically (see column 3 lines 61 to 64) before it is assembled in said body, and said body including receiver means (107,112) for receiving the reservoir, said actuator means being characterized in that said actuator means include lateral actuator element (33) that is displaceable in a direction that is different from the displacement direction of the spray means.

Opperman does not disclose lateral access means for enabling the filled reservoir to be assembled sideways into the body. Crose discloses lateral access means to insert a filled reservoir sideways into a spraying body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the body of Opperman with the lateral access means of Crose in order to easily replace empty reservoirs with filled reservoirs.

Regarding claim 2, Opperman discloses that the walls may include a window. See column 5 lines 9 to 15.

Regarding claim 3, the entire body being a window every point would be diametrically opposite another window.

Regarding claim 4, Opperman further discloses snap fit mean (107,108,109).

Regarding claim 5, the reservoir of Opperman is formed by a hollow tube (107), which is closed in a sealed manner by a first (116) and second (124) plugs disposed in said tube, the fluid being disposed between the plugs.

Regarding claim 6, Opperman does not disclose an axially displaceable rod to actuate the sprayer. Corse discloses an axially displaceable rod (15) to actuate the sprayer. It would have been obvious to one having ordinary skill in the art at the time the

> invention was made to substitute the action means of Corse for the actuation means of Opperman in order to actuate the sprayer from the bottom rather than the top to allow for easier actuation.
>
> Regarding claim 7, the reservoir means includes piercing means (15) for piercing the second plug.
>
> Regarding claim 8, the spray means, actuator means, and reservoir opening means are assembled to form a unit, the reservoir being assembled in said reservoir [has] been filled and plugged.
>
> Regarding claim 9, the modified device has a cover.
>
> Regarding claims 11 and 12, the actuator element is displaced in a direction transverse (towards the body) to the displacement direction (axial to the body) of the spray means.
>
> Regarding [claims] 13 and 14, the spray device would be used in the nasal cavity.
>
> Regarding claim 15, Opperman does not disclose an axially displaceable rod to actuate the sprayer. Corse discloses an axially displaceable rod (15) to actuate the sprayer. It would have been obvious to one having ordinary skill [in the] art at the time the invention was made to substitute the action means of Corse for the actuation means of Opperman in order to actuate the sprayer from the bottom rather than the top to allow for easier actuation.
>
> Regarding claim 16, Opperman further discloses snap fit mean (107,108,109).
>
> Regarding claim 17, the lever of Opperman pivots.
>
> Regarding claim 18, the opening device is a needle.

Office Action at pages 6-9. Applicant disagrees.

Opperman discloses a pump including a container (1) shaped to receive a sealed vial (2) containing the fluid product to be dispensed. The vial is <u>axially</u> introduced into the container. The lateral actuator element (33) is moveable in a direction substantially <u>parallel</u> to the displacement direction of the pump. Indeed, as seen on Fig. 4, the actuator 33 must be drawn

vertically upwards towards element 30, the vertical movement being parallel to the movement of the pump. Therefore, Opperman does not disclose the feature of the lateral actuator being displaced transversely to the displacement direction of the spray means. Accordingly, claims 1 and 12 are believed to be allowable for this reason.

Additionally, Crose discloses a syringe including a barrel in which is placed an ampoule containing the fluid product to be dispensed. The syringe is standard/conventional (*see* col. 4, l. 20, col. 5, l. 21-22). The lateral access provided into the barrel for introducing the ampoule into the barrel is never explicitly specified in the description.

Therefore, it is clear that a person skilled in the art would not have found it obvious to combine the teachings of Crose with Opperman, Crose belonging to a technical field (syringe) totally different and remote from the field of the pump of Opperman. Moreover, Crose is not even reasonably pertinent to the particular problem with which the inventor of the present application was involved. Indeed, the teachings of Crose are clearly too vague to be exploited by a person skilled in the art in the manner set forth in the rejection, as Crose does not particularly point out any deficiency in the Opperman pump. Any other conclusion could only be derived from impermissible hindsight analysis.

Claims 1 and 12 are therefore believed to be allowable for this reason as well.

In view of the foregoing, the Examiner is kindly requested to reconsider and withdraw the rejections of claims 1 and 12 and rejected claims dependent therefrom.

New Claims

For additional claim coverage merited by the scope of the invention, Applicant is adding new claims 19 and 20, which are allowable at least by reason of their respective dependencies.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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